

***NEW HAMPSHIRE CODE OF
ADMINISTRATIVE RULES***

CHAPTERS Odb 200 thru 500

Oil Fund Disbursement Board Appeal
Procedures

Rules for Reimbursement/Disbursement From
the Petroleum Cleanup Funds Under
RSA 146-D, RSA 146-E, and RSA 146-F

Effective July 22, 1997

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CHAPTER Odb 500 - REPEALED

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Department Of Environmental Services
Waste Management Division
Oil Fund Disbursement Board
29 Hazen Drive
Concord, NH 03302-0095

CHAPTER Odb 100 - REPEALED

Statutory Authority: RSA 146-D:5, I

REVISION NOTE:

Document #5534, effective 12-21-92, made extensive changes to the wording, structure, and numbering of rules in Chapter Odb 100. Document #5534 supersedes all prior filings for the sections in this chapter. The prior filings for former Chapter Odb 100 include the following documents:

#4759, eff 2-13-90
#5115, eff 4-16-91

Source. (See Revision Note at chapter heading for Odb 100)
#5534, eff 12-21-92; rpld by #6543, eff 7-22-97

CHAPTER Odb 200 OIL FUND DISBURSEMENT BOARD APPEAL PROCEDURES

REVISION NOTE

Document #5534, effective 12-21-92, made extensive changes to the wording, structure, and numbering of rules in Chapter Odb 200. Document #5534 supersedes all prior filings for the sections in this chapter. The prior filings for former Chapter Odb 200 include the following documents:

#4760, eff 2-13-90
#5115, eff 4-16-91

Statutory Authority: RSA 146-D: I, RSA 146-E:6, I and RSA 146-F:5, I

PART Odb 201 APPEALS OF DECISIONS

Odb 201.01 Request for Hearing.

- (a) The procedures set forth in this part apply to all requests for adjudicatory hearings.
- (b) All requests for hearings shall be filed within 30 days of the date of notification of a board decision.
- (c) Upon request of an owner or applicant as applicable, the board shall convene a hearing to reconsider decisions regarding facility eligibility, reimbursement of eligible cleanup costs or third-party claims, confidentiality or waivers of rules.

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(d) Upon request of a distributor as defined in RSA 146-D:2, I, the board shall convene a hearing to reconsider decisions regarding waivers of penalties under RSA 146-D:3 III.

(e) Any person aggrieved by a decision of the board may request a hearing, and such request shall include a statement of the relief sought and the rule or statutory provision under which the relief is sought.

(f) The board shall establish a date and time for a hearing at its next regularly scheduled meeting following the receipt of a request, and shall provide notice in accordance with Odb 201.10.

(g) Prior to commencement of hearing proceedings, any party may submit a written request to waive the application of any of the hearing rules of this part not required by statute. If no party objects to the request, and if the board determines that granting the request is necessary to conduct a more efficient hearing, then the rule or rules shall be waived and so noted in the hearing record.

Source. (See Revision Note at chapter heading for Odb 200)
#5534, eff 12-21-92; ss by #6543, eff 7-22-97

Odb 201.02 Place of Hearings. All hearings before the board shall be held at the Legislative Office Building, State Street, Concord, NH unless otherwise notified.

Source. (See Revision Note at chapter heading for Odb 200)
#5534, eff 12-21-92; ss by #6543, eff 7-22-97

Odb 201.03 Computation of Time. All time periods referenced in these rules shall be calendar days, commencing with the first day following the date of an action. If the last day of the time period falls on a Saturday, Sunday or legal holiday, then the time period shall be extended to include the first business day following the Saturday, Sunday or legal holiday.

Source. (See Revision Note at chapter heading for Odb 200)
#5534, eff 12-21-92; ss by #6543, eff 7-22-97

Odb 201.04 Extensions of Time.

(a) Any party requesting a hearing pursuant to Odb 201.01 to an action before the board, may petition the board to extend any time limit prescribed by these rules. A request for an extension shall be submitted in writing to the board prior to the expiration of the prescribed period and shall state the reasons for the extension request. A copy of the request shall also be sent to all other parties involved in the action.

(b) Any other party to the action may object to the request by filing a written objection with the board within 5 days of receipt of the request, stating the reasons why the request should not be granted.

(c) If there is no opposition to the request and if the delay would not prejudice the interests of any other party to the action, the board shall grant the request. If an objection to a request is filed, the board shall consider the reasons for and against the extension and shall rule on the request as on any other motion or appeal.

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(d) The chairman of the board shall notify all parties of the board's actions.

Source. (See Revision Note at chapter heading for Odb 200)
#5534, eff 12-21-92; ss by #6543, eff 7-22-97

Odb 201.05 Office. The principal office of the board is located at the Waste Management Division, Health and Human Services Building at 6 Hazen Drive, Concord, NH.

Source. (See Revision Note at chapter heading for Odb 200)
#5534, eff 12-21-92; ss by #6543, eff 7-22-97

Odb 201.06 Date of Filing. All exhibits, findings of fact, correspondence, motions, petitions, applications and any other documents governed by these rules shall be deemed to have been filed with or received by the board on the actual date of receipt by the board.

Source. (See Revision Note at chapter heading for Odb 200)
#5534, eff 12-21-92; ss by #6543, eff 7-22-97

Odb 201.07 Identification of Communications. Communications shall contain the name and address of the communicator and the appropriate site identification number, where applicable, pertaining to the subject of the communication. When the subject matter pertains to a pending proceeding, the title of the proceeding shall be given.

Source. (See Revision Note at chapter heading for Odb 200)
#5534, eff 12-21-92; ss by #6543, eff 7-22-97

Odb 201.08 Appearance Before the Board. Any party or intervenors, or their designated representative, shall be entitled to enter an appearance and participate in the hearing. Appearances may be entered either in writing or upon the record of the hearing. Other persons, not parties to a proceeding but having an interest in the subject matter of the proceeding, may participate in the hearing to the extent that they are able to establish an interest, other than that of the public generally, in the subject matter of the proceeding.

Source. (See Revision Note at chapter heading for Odb 200)
#5534, eff 12-21-92; ss by #6543, eff 7-22-97

Odb 201.09 Representatives. Any party to a hearing before the board may be represented by an individual as that party may designate.

Source. (See Revision Note at chapter heading for Odb 200)
#5534, eff 12-21-92; ss by #6543, eff 7-22-97

Odb 201.10 Notice of Hearings. When a hearing is scheduled to consider issues raised by a request for hearing filed pursuant to Odb 201.01, notice shall be provided to all parties at least 15 days prior to the hearing date. The notice shall specify the date, time, place and subject matter of the hearing.

Source. (See Revision Note at chapter heading for Odb 200)
#5534, eff 12-21-92; ss by #6543, eff 7-22-97

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Odb 201.11 Hearing Record. The record of the hearing shall consist of a verbatim recording of the hearing, documentary evidence introduced by the parties and documents of which official notice has been taken by the board.

Source. (See Revision Note at chapter heading for Odb 200)
#5534, eff 12-21-92; ss by #6543, eff 7-22-97

Odb 201.12 Hearing Procedures.

(a) The presiding officer at a hearing shall be the chairman of the board if present and willing to preside. If the chairman is unavailable for whatever reason, the presiding officer shall be the vice-chairman, if available, or a member of the board selected by those members present at the hearing.

(b) The presiding officer may:

- (1) Regulate the course of the hearing;
- (2) Rule upon issues of procedure; and
- (3) Take such other action that is necessary for the efficient and orderly conduct of the hearing.

(c) The hearing shall be conducted in accordance with the following provisions:

- (1) The presiding officer shall open the hearing by describing the general terms, the purpose of the hearing and the general procedure governing its conduct.
- (2) Any person appearing before the board shall be required to state for the record his or her name, address, and if a representative of a party, the identity of the party so represented.

Source. (See Revision Note at chapter heading for Odb 200)
#5534, eff 12-21-92; ss by #6543, eff 7-22-97

Odb 201.13 Documentary Evidence.

(a) Evidence which is relevant and material to the subject matter of the hearing shall be admissible. Evidence which is irrelevant, immaterial, or unduly repetitious shall be excluded. The experience, technical competence, and specialized knowledge of the board members shall be utilized in the evaluation of all evidence submitted to the board.

(b) The board shall include in its final decision those facts of which it took official notice unless those facts are included in the transcript of the record.

(c) All documents, materials and objects offered in evidence as exhibits shall, if accepted, be numbered or otherwise identified. Documentary evidence shall be received in the form of copies or excerpts if the original is not readily available. Any person offering any documentary or photographic evidence shall provide the board with 20 copies of such documents or photographs, unless such documents or photographs are determined to be of such form, size or character as not to be reasonably suitable for reproduction.

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(d) All written statements and documents, materials, and objects admitted into evidence shall be made available during the course of the hearing for public examination. Following the hearing, all such evidence shall be available at the board's office in Concord during normal business hours.

(e) In any proceeding involving an application, the application filed with the board, including exhibits and amendments thereto, shall become part of the record under Odb 201.11.

(f) All objections to rulings of the presiding officer regarding evidence or procedure and the grounds therefor shall be timely stated during the course of the hearing. Nothing herein shall be construed to permit interlocutory appeal of rulings of the presiding officer.

(g) In any proceeding involving confidential information as defined under Odb 401.03(f), or an appeal of a determination of confidentiality made under Odb 401.13, public access to specific records or appearances shall be restricted as necessary to ensure confidentiality, or pending a final decision of the board.

Source. (See Revision Note at chapter heading for Odb 200)
#5534, eff 12-21-92; ss by #6543, eff 7-22-97

Odb 201.14 Exhibits.

(a) Where evidence to be presented consists of tabulations and figures so numerous as to make oral presentation difficult to follow, it shall be presented in exhibit form. Exhibits may be summarized, supplemented and explained.

(b) Space shall be provided in the upper right hand corner of each such exhibit for the insertion of the number of the exhibit and the name of the witness through whom it is presented.

(c) The original exhibit and 20 copies thereof shall be provided to the board and at least 1 copy shall be provided to all other parties.

Source. (See Revision Note at chapter heading for Odb 200)
#5534, eff 12-21-92; ss by #6543, eff 7-22-97

Odb 201.15 Advance Filing of Exhibits. Any party intending to use exhibits shall file an original and 20 copies thereof with the board at least 15 days prior to the hearing at which such exhibits are to be introduced.

Source. (See Revision Note at chapter heading for Odb 200)
#5534, eff 12-21-92; ss by #6543, eff 7-22-97

Odb 201.16 Signatures. Every application, exhibit, notice, motion, petition, complaint, brief and memorandum shall be signed by the person filing the document, or by one or more attorneys in their individual names or by other duly designated representative on behalf of the person filing the document.

Source. (See Revision Note at chapter heading for Odb 200)
#5534, eff 12-21-92; ss by #6543, eff 7-22-97

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Odb 201.17 Continuance.

(a) Any party may request that a hearing conducted pursuant to this Part be continued for reasonable cause and reconvened or rescheduled. Reasonable cause shall include, but not be limited to, unavailability of an individual party or a representative or critical documents.

(b) Requests for a continuance made prior to a hearing shall be in writing and shall state the reason(s) for the request. Requests for a continuance made at a hearing may be made orally and shall be entered in the record of the hearing.

(c) If the presiding officer determines that reasonable cause exists and that no other party will be prejudiced by the delay, the board shall grant the request. All orders for continuance shall specify the time and place at which such hearing shall be reconvened. The presiding officer shall notify the parties and the public, if applicable, in such a manner as is appropriate to insure that reasonable notice shall be given of the time and place of such continued hearing.

Source. (See Revision Note at chapter heading for Odb 200)
#5534, eff 12-21-92; ss by #6543, eff 7-22-97

Odb 201.18 Recess and Adjournment. The presiding officer shall, from time to time, at the request of any party or members of the board, recess or adjourn any hearings as may be necessary to the orderly conduct of the proceeding.

Source. (See Revision Note at chapter heading for Odb 200)
#5534, eff 12-21-92; ss by #6543, eff 7-22-97

Odb 201.19 Conclusion of Hearing.

(a) After the conclusion of the hearing, no other evidence shall be allowed into the record, except as provided in Odb 201.19(b).

(b) Prior to the conclusion of the hearing a party may request that the record be left open for a specified period of time to accommodate the filing of documents not available at the hearing. If the board determines that such documents are necessary to a full consideration of the subject matter, the presiding officer shall set a date by which the additional documents shall be filed. The board shall allow 10 days from the date of filing for submittal of any party's response, prior to closing the record.

Source. (See Revision Note at chapter heading for Odb 200)
#5534, eff 12-21-92; ss by #6543, eff 7-22-97

Odb 201.20 Reopening of the Record. At any time prior to a final decision any party to a proceeding, including intervenors, may request the presiding officer to reopen the record to consider documents or arguments not previously considered. If the presiding officer determines that such documents or arguments are necessary to a full consideration of the subject matter of the proceeding the record shall be reopened, and written notice shall be given to all parties, including intervenors.

Source. (See Revision Note at chapter heading Odb 200)
#5534, eff 12-21-92; ss by #6543, eff 7-22-97

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Odb 201.21 Decision of Board. Following the conclusion of a hearing, or the closing of the record, the board shall issue a decision either granting or denying the relief requested by the aggrieved party.

Source. (See Revision Note at chapter heading Odb 200)
#5534, eff 12-21-92; ss by #6543, eff 7-22-97

PART Odb 202 WAIVERS

Odb 202.01 Waiver of Penalties. Upon request of a distributor as defined in RSA 146-D:2, I, the board shall consider waivers of penalties under RSA 146-D:3, III, and shall provide notice of its decision to the distributor within 60 days.

Source. (See Revision Note at chapter heading Odb 200)
#5534, eff 12-21-92

CHAPTER Odb 300 - REPEALED

Source. #4761, eff 02-13-90; ss by #5115, eff 4-16-91; ss by
#5534, eff 12-21-92; rpld by #6543, eff 7-22-97

CHAPTER Odb 400 RULES FOR REIMBURSEMENT FROM THE OIL DISCHARGE CLEANUP FUNDS UNDER RSA 146-D, RSA 146-E AND RSA 146-F

PART Odb 401 REIMBURSEMENT PROCEDURES

Statutory Authority: RSA 146-D:5, I; RSA 146-E:6, I and RSA 146-F:5, I

Odb 401.01 Purpose. The purpose of these rules is to establish eligibility criteria and procedures for obtaining reimbursement of costs for corrective action and third-party damages which result from the discharge of oil, fuel oil or motor oil from a petroleum storage facility.

Source. #4762, eff 2-13-90; ss by #5115, eff 4-16-91; ss by
#5534, eff 12-21-92; ss by #6543, eff 7-22-97

Odb 401.02 Applicability. These rules shall apply to owners of facilities seeking eligibility for reimbursement on or after the effective date of these rules.

Source. #4762, eff 2-13-90; ss by #5115, eff 4-16-91; ss by
#5534, eff 12-21-92; ss by #6543, eff 7-22-97

Odb 401.03 Definitions.

(a) "Active facility" means an oil, fuel oil or motor oil storage facility which has not been permanently closed in accordance with department rules.

(b) "Applicant" means a person who performs corrective action under contract with a facility owner, or under contract with a transferee of property as specified in Odb 401.06.

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(c) "Board" means the oil fund disbursement board established by RSA 146-D:4.

(d) "Bodily injury costs" means damages proven by expert medical testimony as to diagnosable personal injury, illness, or other bodily injury, including emotional distress accompanied by physical manifestations, suffered by a party other than an owner or its agents as a result of a discharge.

(e) "Capital equipment" means electronic, chemical, mechanical or structural equipment installed to perform corrective action, which has a long-term life greater than 2 years and has an initial value or purchase cost, either individually or as an aggregate, of \$10,000.00 or more.

(f) "Confidential business information" means information that was accumulated, compiled, discovered or purchased by the owner/applicant or employees of a business through their own efforts, which is not readily available through normal business channels and which confers a competitive benefit which would be lost by disclosure of the information, provided the owner/applicant has taken reasonable measures to protect the confidentiality of the information and will continue to take such measures.

(g) "Contamination" or "contaminated" means the presence of oil, fuel oil or motor oil in the groundwater, surface water or soil as a result of a discharge from a facility.

(h) "Corrective action" means investigation or cleanup activities performed in accordance with Env-Ws 410 or Env-Ws 412, and approved by the department, to remedy contamination or contain a discharge.

(i) "Corrective action report" means a report on site conditions or cleanup submitted in accordance with Env-Ws 410 or Env-Ws 412.

(j) "Deductible" means initial costs incurred for corrective action for which an owner is liable to the fund under RSA 146-D:6, II.

(k) "Department" means the New Hampshire department of environmental services.

(l) "Discharge" means a spill or release of oil, fuel oil or motor oil from a facility.

(m) "Emergency services" means corrective action performed to mitigate an immediate threat to human health and the environment. Emergency services includes responding to one or more of the following conditions: explosive levels or concentrations of vapors in buildings or subsurface utilities; free product present in significant quantities at ground surface, on surface water bodies, in subsurface utilities or surface water runoff; contamination or immediate threat of contamination to active water supply wells, or public water supply surface water intake; and ambient vapor concentrations which exceed concentrations of concern from acute exposure or safety viewpoint.

(n) "Facility" means:

(1) A "bulk storage facility" as defined in RSA 146-D:2, V or RSA 146-E:2, I;

(2) An "on-premise-use facility" as defined in RSA 146-E:2, III;

(3) A "motor oil storage facility" as defined in RSA 146-F:2, II; or

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(4) An "underground storage facility" as defined in RSA 146-D:2,II, as applicable.

(o) "Financial statement" means a complete accounting of a facility owner's business and personal financial condition which shall include a balance sheet of assets and liabilities and an income statement of annual revenues and expenses.

(p) "First-party costs" means costs directly incurred by an owner or applicant, or which are a contractual obligation of an owner, for performing corrective action.

(q) "Fuel oil" means "fuel oil" as defined in RSA 146-E:2, II, namely "fuel oil products stored for on-premise heating purposes, and not for purposes of propulsion of motor vehicles, operation of machinery, or primarily used for the generation of electric power".

(r) "Fund" means the Oil Discharge and Disposal Cleanup Fund established by RSA 146-D, the Fuel Oil Discharge Cleanup Fund as established by RSA 146-E, or the Motor Oil Discharge Cleanup Fund established by RSA 146-F, as applicable.

(s) "Fund account" means the underground storage facility or bulk storage facility reimbursement accounts established under RSA 146-D:3, VI, or reimbursement accounts established by the board under RSA 146-E or RSA 146-F, as applicable.

(t) "Motor oil" means "motor oil" as defined under RSA 146-F:2, I, namely "any lubricating oil, which is reclaimable, classified for use in an internal combustion engine, transmission, gear box, or differential for a motor vehicle, boat, or off-highway recreational vehicle, or commercial or household power equipment".

(u) "Oil" means "oil" as defined in RSA 146-D:2, III, namely "gasoline and diesel products for purposes of collection of fees under RSA 146-D:3, and shall mean 'oil' as defined under RSA 146-C:1,XII, for purposes of reimbursement of costs for cleanup and third-party damages resulting from a discharge. For purposes of collecting fees under RSA 146-D:3, the term 'oil' shall not include natural gas, liquefied petroleum gas, or synthetic natural gas, regardless of derivation or source, or any oil or diesel products used for heating, processing, or generating electricity".

(v) "Other insurance" means private insurance coverage for corrective action and third-party damage costs that is valid and collectible by the owner, and includes private insurance held by the owner through either a wholly-owned or jointly-owned subsidiary in the business of providing insurance coverage to the owner or to the owner and others.

(w) "Owner" means the person in possession of or having legal ownership of a facility.

(x) "Performance standard" means an expected level of completeness, quality and/or reduction in measurable contamination when performing corrective action in accordance with department of environmental services rules.

(y) "Permanently closed facility" means an oil, fuel oil or motor oil storage facility which is no longer usable due to the physical removal of all tanks and appurtenances from the property, or due to closure in place on the property, and the removal or closure was performed in accordance with department rules.

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(z) "Person" means "person" as defined in RSA 146-C:1, XIV-a, namely "any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, limited liability company, state and agencies thereof, municipality, commission, political subdivision of a state, interstate body, consortium, joint venture, commercial entity, the United States government and agencies thereof, and any other legal entity".

(aa) "Property damage" means physical damage to, or loss of use of, tangible property owned by a party other than the facility owner or his/her employees.

(ab) "Property restoration" means in-kind repair or replacement of landscaping, roadways, structures or other property which is damaged as a result of performing corrective action within the limits of a site.

(ac) "Property transferee" means a person who takes legal title to property from a fund eligible owner of a permanently closed facility and who may receive reimbursement for corrective action costs directly from the fund under certain conditions under these rules.

(ad) "Reasonable cost" means the prevailing market rate for labor, materials, goods, services or task for performing corrective action.

(ae) "Reimbursement" means an assignment of money made by the board from the fund in payment of reimbursable costs.

(af) "Site" means the area contaminated by a discharge of fuel oil or oil from a facility without regard to property boundaries.

(ag) "Third-party damage costs" means costs which are an obligation of an owner as a result of a court-approved settlement or judgment in a civil action against the owner by a party who has suffered bodily injury or property damage as defined in these rules.

Source. #4762, eff 2-13-90; ss by #5115, eff 4-16-91; ss by #5534, eff 12-21-92; ss by #6543, eff 7-22-97

Odb 401.04 Limits of Fund Availability.

(a) The fund shall be available for payment of reimbursable first-party costs and reimbursable third-party damage costs resulting from discharges of oil, fuel oil or motor oil from a facility.

(b) Reimbursements under RSA 146-D shall be limited to costs incurred on or after the date of discovery of a discharge or July 1, 1988, whichever is later.

(c) Reimbursements under RSA 146-E shall be limited to costs incurred on or after the date of discovery of a discharge or October 1, 1992, whichever is later.

(d) Reimbursements under RSA 146-F shall be limited to costs incurred on or after the date of discovery of a discharge or July 1, 1995, whichever is later.

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(e) Reimbursements under RSA 146-D shall be limited to \$1,000,000 per discharge, and reimbursements under RSA 146-E and RSA 146-F shall be limited to \$500,000 per discharge. The per discharge limit shall be the sum of reimbursable first-party costs and reimbursable third-party damage costs.

(f) The fund shall not be available for reimbursement of first-party costs and third-party damage costs covered under other valid and collectible policies of insurance.

(g) The fund shall be available for facilities which are in compliance with all registration, permitting, permit fee and operating requirements applicable to each facility. Facility compliance and eligibility requirements shall be those specified under Odb 401.05.

(h) The following persons and entities shall be eligible for reimbursement under the fund:

(1) Current owners of active facilities;

(2) Owners of permanently closed facilities to the extent that a property transferee is not eligible for reimbursement under Odb 401.06; and

(3) Property transferees under Odb 401.06.

(i) The former owner of an active facility shall be eligible for reimbursement for corrective action costs incurred prior to the effective date of ownership transfer and for reimbursement of third-party damage costs resulting from lawsuits filed prior to facility transfer, subject to the limitations of these rules.

Source. #4762, eff 2-13-90; ss by #5115, eff 4-16-91; ss by #5534, eff 12-21-92; ss by #6543, eff 7-22-97

Odb 401.05 Facility Compliance And Fund Eligibility Requirements.

(a) Underground storage facilities shall be in compliance with the registration requirements of RSA 146-C:3, Env-Wm 1401, and all required permit fees due under RSA 146-C:4, III shall have been paid.

(b) Bulk storage facilities shall be in compliance with the registration requirements of RSA 146-D:6, I-a. or RSA 146-E:5, I as applicable, and all applicable state and federal regulations.

(c) On-premise-use facilities shall be in compliance with the requirements of RSA 146-E:4.

(d) Motor oil storage facilities shall be in compliance with the requirements of RSA 146-F:4.

(e) Eligibility for reimbursement from the fund shall be contingent upon demonstration that facility compliance has been achieved and maintained.

Source. #4762, eff 2-13-90; ss by #5115, eff 4-16-91; ss by #5534, eff 12-21-92; ss by #6543, eff 7-22-97

Odb 401.06 Reimbursement of Corrective Action Costs to Property Transferees.

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(a) Persons who are not owners of a permanently closed facility, and who take title to property from an eligible facility owner, may obtain reimbursement for corrective action costs if the following conditions are met:

- (1) The facility owner is eligible for reimbursement of corrective action costs and signs a waiver of any rights for reimbursement of costs incurred for corrective action contracted after the effective date of the property transfer;
- (2) The facility is in compliance as required under Odb 401.05;
- (3) Legal title to the property upon which the facility was located has been transferred to the person seeking reimbursement, and the transferee has filed written notice with the board including the name of the transferee, mailing address, telephone number, the effective date of the transfer of title, and a copy of the property deed;
- (4) The transferee has assumed responsibility for performance of corrective action, has transferred applicable corrective action permits to his or her name and otherwise qualifies for reimbursement under these rules; and
- (5) The owner's deductible obligation under Odb 401.11 has been satisfied.

(b) Transferees who obtain reimbursement for corrective action costs under this section shall not be eligible for reimbursement of third-party damage costs.

(c) The facility owner shall continue to be eligible for reimbursement for corrective action costs incurred prior to the effective date of the property transfer and for reimbursement of third-party damage costs, subject to the limitations of these rules.

Source. #6543, eff 7-22-97

Odb 401.07 Coverage Under Other Insurance.

(a) The fund shall provide excess insurance to reimburse first-party costs or third party damage costs not covered within the limits of other valid and collectible insurance. The fund shall provide coverage only after any primary, excess, and umbrella coverage has been exhausted. The fund shall only be liable for those costs incurred by the owner or property transferee that are in excess of the total amount of the limits of liability under all such other insurance held by the owner, and only up to the applicable limit of liability for the applicable fund.

(b) An owner who holds a policy of insurance for a facility or property shall first submit claims to other insurance providers for purposes of a coverage determination before submitting any claims to the fund. The owner shall submit documentation regarding the findings of the coverage determination when submitting an initial reimbursement request to the fund. If coverage is denied or payment is otherwise refused, the insurance shall be deemed not collectible by the owner.

(c) An owner who has received payment from an insurance provider shall provide a copy of the claim filed with its provider and a complete listing of invoices which have been paid by such insurance, when submitting an initial reimbursement request to the fund. Such listing shall be certified for accuracy by the insurance provider.

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(d) An owner may utilize other insurance to cover the cost of the fund deductible or for costs which are not eligible under the fund. Reimbursements from the fund shall be adjusted such that the total of payments received from the fund and other insurance does not exceed an owner's total incurred costs.

(e) An owner shall not be required to submit a workscope and budget under the provisions of Odb 401.27, unless the limits of coverage under other insurance will be exceeded prior to the completion of a corrective action phase. In this event, the owner shall comply with the provisions of Odb 401.27 prior to initiating a corrective action phase and shall specify those tasks for which it will seek reimbursement from the fund.

(f) The fund shall not provide reimbursement to an insurer that submits a claim under a subrogation agreement with the owner or through an owner's attempted assignment of interest.

(g) The board shall be subrogated to any claims by an owner for coverage, payments, or reimbursements against any person to whom the owner has a claim.

Source. #6543, eff 7-22-97

Odb 401.08 Assignment and Subrogation.

(a) An owner's assignment of interest in the fund or right of subrogation claims against the fund shall not be assignable or transferable to a third party. Any attempted assignment or transfer shall not be effective against the fund and shall be considered void.

(b) If an owner's insurance coverage, or the responsibility for the discharge, is in dispute, and in the event of any payment from the fund, the board shall be subrogated to all the owner's rights of recovery therefor against any person or organization including other insurers. The owner shall execute and deliver instruments and do whatever else is necessary for the board to pursue such claims upon request by the board.

(c) The board shall be subrogated to any claims by an owner against any third parties and the board shall be entitled to recover any payments made by a third party to an owner for expenses previously reimbursed by the fund.

Source. #6543, eff 7-22-97

Odb 401.09 Proof of Discharge

(a) The owner of an active or permanently closed facility seeking eligibility for reimbursement from the fund, shall provide evidence of a discharge of oil, fuel oil or motor oil by one or more of the following means:

(1) Photographs, release detection records, or physical evidence of a structural failure of a facility storage or conveyance device, or other event, which results in a discharge; or

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(2) Site investigation data which indicates the presence of contamination in soil or groundwater at a site, which is consistent with the nature of the oil, fuel oil or motor oil product stored or formerly stored at a facility, and which is not associated with another facility located in the vicinity of the owner's facility.

(b) Proof of discharge required under this section may be submitted to the department when notification is provided pursuant to Env-Ws 412.04, or when a facility closure report is submitted.

(c) Multiple discharges from a facility discovered at one time shall be considered a single discharge.

Source. #6543, eff 7-22-97

Odb 401.10 Determination of Fund Account. When contamination is discovered at a site or property which contains more than one facility type covered under these rules, the board shall request that the department determine the fund account(s) for reimbursement purposes based on a comparison of the contamination present in soil and/or groundwater, and the nature of the oil, fuel oil or motor oil product stored.

Source. #6543, eff 7-22-97

Odb 401.11 Liability for Deductible.

(a) The owner of a facility seeking eligibility for reimbursement from the fund shall be liable for initial cleanup costs as described in RSA 146-D:6, II. The deductible amount shall be withheld when reimbursement is payable to an owner, but shall not be withheld when reimbursement is payable to an applicant.

(b) If an initial reimbursement request is submitted by an applicant, the board shall bill the owner for the deductible amount and the owner shall pay the deductible amount to the fund within 30 days of the billing date.

(c) If the owner is not able to pay the entire deductible amount within 30 days of the billing date, the owner shall submit a written request that the board approve periodic payments.

(d) The request for approval of periodic payments shall include the following information:

(1) The owner provides written confirmation that it has been denied credit or a loan from at least two lending institutions;

(2) The owner provides a complete financial statement as defined in these rules, which demonstrates that the entire deductible amount is not immediately available for payment and;

(3) The owner proposes an amount to be paid to the fund each month which is commensurate with the owner's ability to pay, in consideration of other financial obligations.

(e) The board shall approve a request for periodic payments upon determining that the submittal requirements of paragraph (d) above have been met, and shall issue a written notice of its decision.

(f) The owner shall submit an annual financial statement update commencing 12 months after the date of the board's initial approval of a request for periodic payments. If the information provided by the owner indicates an adjustment in the amount of periodic payments is warranted due to a change in the owner's

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financial condition, the board shall modify its approval for periodic payments accordingly, and shall issue written notice to the owner.

Source. #6543, eff 7-22-97

Odb 401.12 Determination of Deductible.

(a) Upon receipt of an initial request for reimbursement, the board shall request that the department review its records to verify the number of facilities the owner has indicated it owned as of the date of discovery of a discharge.

(b) The deductible assessed for each facility discharge shall be as required under the provisions of RSA 146-D:6, II, which were in effect at the time the discharge was discovered. Any permanently closed facility at which no contamination is present, no corrective action is required, or no access to the fund will be sought, shall not be included in the total ownership count for purposes of determining the deductible.

(c) If separate discharges have occurred at a site, a separate deductible shall be applied for each facility fund account and for each discharge.

Source. #6543, eff 7-22-97

Odb 401.13 Confidentiality.

(a) Except as specified in (c) below, and except for the name and address of any owner or applicant, the owner or applicant may claim as confidential any information believed to be confidential business information as defined in Odb 401.03(f). All claims of confidentiality shall be asserted at the time of submission by stamping or writing the words "Confidential Business Information" on each page containing such information and by specifying those portions of the information on the page to which the claim shall apply if the claim does not apply to all information on the page. If no such claim shall have been made at the time of submission, the board shall not restrict public access to the information.

(b) Subject to (c) below, if the board receives a request for information that has been designated as "Confidential Business Information" as understood under RSA 91-A:5, the board shall review the information against the definition of Odb 401.03(f). If the board determines that the information fails to meet the definition of confidential business information, it shall notify the owner or applicant that the information shall be released on a specific date, which shall be no earlier than 30 days from the date of the board's notice. Based on the owner's or applicant's response, the board shall make specific findings as to whether the information is confidential business information. If the board finds that the information shall not constitute confidential business information, the board shall release the information to the person requesting the information and shall thereafter not restrict public access to the information. Requests for reconsideration of the board's decisions shall be made in accordance with Odb 401.39. The board shall not release the information until a final decision on the merits of a reconsideration request is reached.

(c) The board shall release information for which a claim of confidentiality has been asserted to any agency of the state or federal government having an interest in or jurisdiction over the subject matter, provided

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the agency guarantees the same degree of confidentiality afforded by the board under these rules. Notice to the owner or applicant shall not be required for a release of information pursuant to this paragraph.

Source. #6543, eff 7-22-97

Odb 401.14 Corrective Action Contracts.

(a) Any facility owner or property transferee may enter into a contract with a person for performance of corrective action which includes provisions for direct reimbursement to the contractor as an applicant from the fund.

(b) Corrective action contracts may provide for direct reimbursement to a person who manages and oversees the performance of one or more cleanup phases as defined in department rules, but shall not provide for separate reimbursement to individual subcontractors.

(c) Any person who enters into a contract with a facility owner or property transferee which includes provisions for direct reimbursement from the fund, shall agree to waive all claims against the owner or property transferee for payment of services performed within the limits of the contract. The applicant shall obtain waivers of claims against the owner or property transferee, the applicant and the fund from all subcontractors.

(d) For implementation of a department approved remedial action plan, an owner or property transferee may enter into separate contracts with the person who manages and oversees plan implementation and the person who performs construction or cleanup operation services.

Source. #6543, eff 7-22-97

Odb 401.15 Reimbursement Not Contract. Reimbursement by the board to an owner, property transferee or applicant under these provisions shall not be considered a contract.

Source. #6543, eff 7-22-97

Odb 401.16 Permits Required. Nothing contained in these rules shall relieve any owner, property transferee or applicant from obtaining the necessary appropriate federal, state, and local authorization, certification, or permits as required.

Source. #6543, eff 7-22-97

Odb 401.17 Liability for Corrective Action. Nothing contained in these rules shall relieve any owner or property transferee from liability for performing corrective action, in accordance with RSA 146-A, RSA 146-C, and Env-Ws 410 or Env-Ws 412, when a discharge of oil, fuel oil or motor oil occurs.

Source. #6543, eff 7-22-97

Odb 401.18 Right to Enter.

(a) An owner or property transferee shall allow the board or its designee to enter, during reasonable hours, any facility or site location and associated structures, including offices, to:

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- (1) Inspect any corrective action activity;
- (2) Inspect facility records with regard to compliance with department or board rules, corrective action work and associated costs; and
- (3) Inspect contractor records with respect to corrective action work and associated costs.

Source. #6543, eff 7-22-97

Odb 401.19 Financial Audit. An owner, property transferee or applicant shall allow the board or its designee to conduct financial audits of all records pertinent to site corrective action to ensure compliance with Odb 401.28 and Odb 401.29.

Source. #6543, eff 7-22-97

Odb 401.20 Technical Audit. An owner, property transferee or applicant shall allow the board or its designee to conduct technical audits to determine if corrective action was performed in accordance with department of environmental services rules.

Source. #6543, eff 7-22-97

Odb 401.21 Corrective Action Report Format. All corrective action reports for which reimbursement of associated costs will be sought, shall conform to the requirements of Env-Ws 410 or Env-Ws 412 as applicable.

Source. #6543, eff 7-22-97

Odb 401.22 Achievement of Performance Standard. All corrective action work for which reimbursement is sought shall meet the applicable performance standard required under department of environmental services rules.

Source. #6543, eff 7-22-97

Odb 401.23 Reimbursement for Work-In-Progress. When the performance of a corrective action phase will extend beyond a period of 3 months, reimbursement requests may be submitted for completed work based on a schedule for completion of tasks approved by the department prior to commencement of the work under Odb 401.27.

Source. #6543, eff 7-22-97

Odb 401.24 Reimbursement for Capital Equipment Costs.

(a) The costs for the installation or use of capital equipment shall be eligible for reimbursement at the lease rate, or if purchased, at the vendor cost as established by the firm invoiced cost to the owner or property transferee.

(b) If the equipment is purchased, the fund shall retain all rights for any salvage value of the equipment.

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(c) When the project is at or near completion the board, in consultation with the owner regarding its intentions for the disposition of the equipment, shall:

- (1) Withhold from reimbursement an amount equal to the salvage value calculated by the owner, property transferee or applicant under Odb 401.27;
- (2) Require that the actual salvage value be repaid to the fund if the equipment is repossessed or sold; or
- (3) Permit the bid-based salvage value to be used to offset equipment decommissioning costs.

(d) Reimbursement for purchased capital equipment shall not be approved until the capital equipment is installed and operating within the required equipment performance standard and in accordance with the equipment specifications approved by the department.

Source. #6543, eff 7-22-97

Odb 401.25 Reimbursement Under Lump-Sum Contracts. Reimbursement under lump-sum contracts for implementation of a department-approved remedial action plan, shall be based on the percent completion of approved tasks or the percent reduction in contaminant mass, as applicable.

Source. #6543, eff 7-22-97

Odb 401.26 Corrective Action Performed by Owner or Property Transferee. Any facility owner or property transferee may perform corrective action utilizing its own employees and equipment subject to other applicable requirements or limitations of these rules. Reimbursement shall be limited to the owner's actual costs based on employee pay rates, cost of benefits and equipment operating costs. An owner's costs associated with direct oversight of its employees shall not be reimbursable.

Source. #6543, eff 7-22-97

Odb 401.27 Corrective Action Approval Requirements.

(a) The owner or applicant shall submit a separate workscope and budget for each investigative, remedial, monitoring or management permit phase of the corrective action as described under Env-Ws 410 or Env-Ws 412.

(b) The owner or applicant shall submit a workscope and budget for performance of free product recovery or initial response action under Env-Ws 412 upon determination that one or more of the following circumstances exist:

- (1) Multiple free product recovery wells will be required;
- (2) Free product recovery based on groundwater depression and groundwater treatment will be required; or
- (3) Temporary potable water supply treatment will be required.

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(c) Free product recovery or initial response action services not subject to paragraph (b) above, shall be approved by the department based on the contractor's estimate as provided on the department's "Authorization for Initial Response Action" form, or similar contractor provided form. Reimbursable first-party costs shall be subject to the limitations of Odb 401.28 and Odb 401.29.

(d) Reimbursable first-party costs for the performance of an initial site characterization or a preliminary site investigation under Env-Ws 410 or Env-Ws 412 shall be subject to the limitations of Odb 401.28 and Odb 401.29.

(e) With the exception of sole-source technologies, the owner or applicant shall solicit at least three competitive proposals for implementation of a department-approved remedial action plan, and shall include all responsive proposals with the workscope submitted for department review. For purposes of this paragraph, sole-source technology means a technology which is available through a single contractor or equipment vendor, and would otherwise not be available at a lower cost due to patents or other similar proprietary information.

(f) Workscopes for implementation of approved remedial action plans shall include an estimated schedule for achievement of reduction of total contaminant mass in soil and groundwater at intervals of 25 percent, 50 percent, 75 percent and 100 percent of the approved performance standard.

(g) Proposed work scopes and budgets shall include the following information:

(1) Identification of the Env-Ws 410 or Env-Ws 412 corrective action phase, as applicable;

(2) Listing of tasks for each phase;

(3) Classification of work for each task by:

a. Engineering and hydrogeologic services;

b. Laboratory services;

c. Drilling, well installation or subsurface exploration services;

d. Contaminated soils treatment, disposal and restoration services;

e. Groundwater treatment and product recovery equipment, operations and maintenance services; and

f. Other services;

(4) Listing of contractors, subcontractors and equipment vendors for each class, if known;

(5) Description of work including, but not limited to:

a. Personnel description, hours, rate and cost;

b. Temporary equipment or services description, units, unit basis, rate and cost;

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- c. Permanent equipment description, units, unit basis, rate and cost, and salvage value;
- d. Recoverable equipment description, units, unit basis, rate and cost, and salvage value;
- e. Expendable supplies description, units, unit basis, rate and cost;
- f. Miscellaneous expenses description, units, unit basis, rate and cost;
- g. Estimated operation and maintenance costs for installed equipment description, units, unit basis, rate and cost; and
- h. Fees and handling expense description, units, unit basis, rate and cost;

(6) Total cost for each task;

(7) Total cost for each phase; and

(8) A schedule for completion of the work.

(h) An evaluation of the cost-effectiveness of leasing versus purchasing capital equipment shall be submitted with the workscope. The evaluation shall consider equipment cost, reliability, efficiency and performance over the estimated duration of the project.

(i) The department shall approve proposed work scopes and budgets based on a determination of the following:

- (1) That the proposed workscope meets the submittal requirements of this section;
- (2) That the proposed work described by the categories of Odb 401.27(g), meets department requirements for site corrective action; and
- (3) That the proposed costs are reimbursable first-party costs as described under Odb 401.28 and Odb 401.29.

Source. #6543, eff 7-22-97

Odb 401.28 Reimbursable First-Party Costs.

(a) Reimbursable first-party costs shall be those reasonable costs incurred for corrective action subject to the limitations set forth in Odb 401.29 and categorized as follows:

- (1) Management of virgin petroleum contaminated soils in accordance with Env-Ws 412;
- (2) Management of motor oil or used motor oil contaminated soils in accordance with Env-Wm 100 - 2800;
- (3) Services associated with temporary surface water discharge permits under federal and state authority, provided such services are not associated with the closure or installation of a facility;

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- (4) Corrective action performed in accordance with Env-Ws 410;
- (5) Corrective action performed in accordance with Env-Ws 412; and
- (6) Fees for corrective action permits required by local, state and federal agencies.

(b) Reimbursement of first-party costs shall be contingent upon approval of a work scope and budget in accordance with Odb 401.27, as applicable.

Source. #6543, eff 7-22-97

Odb 401.29 First-Party Cost Limitations.

(a) With the exception of corrective action performed by an owner or property transferee, reimbursable costs shall be limited to costs charged by consultants and contractors, and shall not include costs for work which is not directly associated with the performance of corrective action.

(b) The costs for local, state or federal inspection fees, or charges related to obtaining access, shall not be reimbursable.

(c) The costs for restoration of excavated contaminated soil shall be limited to the cost of in-kind replacement.

(d) The cost for property restoration which is not a cost resulting from performance of corrective action shall not be reimbursable.

(e) A facility owner's or property transferee's legal costs shall not be reimbursable.

(f) A facility owner's or property transferee's administrative, fiduciary, management or supervisory costs associated with performance of corrective action shall not be reimbursable.

(g) Costs related to achieving facility compliance, including closure assessments under department rules, shall not be reimbursable.

(h) Interest charges on unpaid invoices shall not be reimbursable.

(i) Reimbursement shall be limited to reasonable costs as defined by Odb 401.03(ad), and no reimbursement shall exceed actual invoiced costs paid or incurred less any discounts received.

(j) Costs invoiced by a general contractor for administration of subcontracted services shall be limited to 10 percent of the actual invoiced costs for the subcontracted service paid or incurred less any discounts received.

(k) Penalties or enhanced cost recovery under RSA 146-A or RSA 146-C shall not be reimbursable.

(l) Overtime costs for performance of routine corrective action services shall be reimbursable at the straight-time rate. Overtime costs for emergency services shall be reimbursable at the prevailing market rates.

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(m) Costs associated with the discovery of a discharge shall not be reimbursable.

(n) Costs in excess of approved budgets which have not been justified shall not be reimbursable.

Source. #6543, eff 7-22-97

Odb 401.30 Owner's Duties in the Event of Claim or Suit.

(a) In the event that a demand is made against an owner by a third party for damages resulting from bodily injury or property damage, the owner shall immediately forward such demand to the board and shall inform the board of any attempts made to settle the matter before the filing of a writ or petition. The owner shall undertake any actions necessary to obtain a reasonable settlement, including initiating demands against other parties who may be liable to the owner for such damages.

(b) Upon service of a writ or petition filed in a court of law by a third party against the owner for damages resulting from bodily injury or property damage, the owner shall provide written notice to the board within 60 days of service. The writ or petition must identify or name the owner of the facility, as well as the location of the facility, in order to be deemed a reimbursable third-party claim. Owners that fail to provide timely notice to the board shall not be eligible for reimbursement of third-party damage costs.

(c) The owner shall provide the board with a copy of all documents related to the third-party action, including those filed with the court, and shall provide timely notice of scheduled hearings, settlement conferences and other actions throughout the proceedings.

(d) The owner shall undertake a reasonable and adequate defense of the claim to preserve the right to seek reimbursement for third-party damage costs from the fund. The owner shall cooperate fully with the board in all matters relating to defending the claim.

(e) The owner shall enforce any right to contribution or indemnity against any person or organization who may be liable to the owner or to the third party claimant and shall seek to join such person or organization in any suit brought by a third party against the owner.

(f) The owner shall submit all proposed settlements to the board for review before entering an agreement with the claimant and before seeking approval from the court.

Source. #6543, eff 7-22-97

Odb 401.31 Board Intervention in Third-Party Action.

(a) The board shall not be responsible for the defense of the owner but shall have the right to intervene in the action as a party in interest, and shall have the right to participate in all settlement discussions related to a threatened or filed third-party action.

(b) The owner shall concur in any motions to intervene filed with the reviewing court by the board.

Source. #6543, eff 7-22-97

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Odb 401.32 Eligibility for Reimbursement of Third-Party Damage Costs

(a) The owner is eligible for reimbursement of third-party damage costs that are not payable by other insurance, to the extent that the court-ordered judgment or settlement consists of compensable bodily injury costs or property damage costs suffered by the claimant.

(b) If the board determines that a proposed settlement is collusive, is not legally or factually supportable or does not fairly reflect compensable third party damages, it shall so notify the owner and shall deny any subsequent request for reimbursement based upon such settlement.

(c) If an owner proceeds to seek court approval of a settlement to which the board objects under paragraph (b), the board shall notify the court of such objection.

(d) The board shall deny any request for reimbursement of third-party damage costs to the extent that the settlement or judgment meets the criteria for objection under paragraph (b).

(e) An owner's legal fees and costs, including contingent fees, punitive awards, statutory double damages, and fines and costs imposed by the court shall not be reimbursable.

(f) All settlements entered into by an owner shall allocate legal fees costs, and double damages fines and costs, if any, separately from amounts payable to the plaintiffs. The owner shall request that the amount awarded for legal fees, costs and double damages fines and costs, if any, be identified in any jury or court award or verdict.

Source. #6543, eff 7-22-97

Odb 401.33 Third-Party Cost Limitations.

(a) No reimbursement shall be made from the fund for third-party damage costs until the amount of the owner's obligation to pay is finally determined either by judgment against the owner after trial on the merits or by written agreement between the owner and the claimant and entered as an order by a court of law.

(b) No reimbursement shall be made from the fund for third-party damage costs until the owner has provided a sworn certification and written proof to the board that other insurance would not cover all or any portion of such damages. If other insurance would cover a portion of such damages, then the fund shall be liable to the extent set forth in Odb 401.07.

(c) Reimbursable third-party damage costs shall be limited to certain monetary damages for bodily injury or property damage as defined in these rules as a result of a court-ordered judgment or court approved settlement entered as an order of the court. The board shall not be bound by any obligations imposed upon the owner through settlement or court-approved judgment for injunctive relief or defense and indemnity of future actions by third parties against the claimant.

(d) No reimbursement shall be made from the fund for liability attributable to any party other than the owner. In all multi-party cases, all settlements entered into by the owner shall apportion liability among the pertinent parties. The owner shall request that the court order apportion liability among the pertinent parties in any jury or court award or verdict.

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(e) Where an owner's third-party damage costs are based on a civil judgment, the costs shall not be eligible if resulting from a default judgment, or a proceeding otherwise not on the merits or not litigated by the owner to secure a reasonable settlement.

Source. #6543, eff 7-22-97

Odb 401.34 Forms.

(a) Requests for reimbursement from the fund shall be made to the board on forms provided by the board.

(b) Requests for reimbursement shall include the following information:

- (1) The type of facility;
- (2) Whether reimbursement is sought for first-party costs or third-party damage costs;
- (3) The request number;
- (4) The amount of the request;
- (5) The date of discharge discovery;
- (6) Facility information including:
 - a. Name;
 - b. Address;
 - c. Location town;
 - d. Whether the facility is active or permanently closed;
 - e. The department's facility identification number; and
 - f. The department's project number;
- (7) Owner information including:
 - a. Name;
 - b. Mailing address;
 - c. Daytime phone number;
 - d. Number of facilities owned;
 - e. Whether other insurance coverage is available;

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- f. The owner's signature; and
 - g. The date signed;
- (8) Whether facility ownership has been transferred;
- (9) If applicable, the date of ownership transfer;
- (10) If applicable, property transferee information including:
 - a. Name;
 - b. Mailing address;
 - c. Daytime phone number;
 - d. The property transferee's signature; and
 - e. The date signed;
- (11) If applicable, applicant information including:
 - a. Name;
 - b. Mailing address;
 - c. Daytime phone number;
 - d. Type of applicant;
 - e. The applicant's signature; and
 - f. The date signed.

(c) The information requested under Odb 401.34 (b)(7) above, shall not be required when a request is submitted by a property transferee.

Source. #6543, eff 7-22-97

Odb 401.35 Requests for Reimbursement.

(a) An owner, property transferee or applicant may submit a request for reimbursement for first party costs to the board upon completion of a corrective action phase performed in accordance with department rules. Periodic requests may be submitted for on-going cleanup activities pursuant to Odb 401.23.

(b) An owner may submit a request for reimbursement for third-party damage costs within 60 days of the date of a valid, final court order or court approved settlement for bodily injury costs or property damage

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costs as defined in these rules. If a court order becomes final prior to the effective date of these rules, the request shall be submitted within 60 days of the effective date of these rules.

(c) An owner may submit a request for reimbursement for third-party damage costs if notification was provided pursuant to Odb 401.30(b).

(d) An owner, property transferee or applicant may submit a request for reimbursement when the limits of coverage under other valid and collectible policies of insurance held by the owner, if any, have been reached.

Source. #6543, eff 7-22-97

Odb 401.36 Reimbursement Submittal Requirements.

(a) Requests for reimbursement for first-party costs shall include:

- (1) A completed request for reimbursement form which includes the information required under Odb 401.34;
- (2) A summary of invoiced expenses by task, class, and contractor, or department workscope approval notice as applicable;
- (3) Copies of all contractor and subcontractor invoices and receipts for expenses for corrective action by class, as described under Odb 401.27;
- (4) Copies of all corrective action reports not previously submitted;
- (5) A copy of the corrective action contract under Odb 401.14 if applicable;
- (6) Certified weigh data, analytical data and certificate of destruction for petroleum contaminated soils if applicable;
- (7) Certified weigh data for replacement fill if applicable;
- (8) Employee payroll records, cost of employee benefits and equipment operating cost data when corrective action is performed by the owner or property transferee;
- (9) Other insurance information required under Odb 401.07, if applicable;
- (10) Facility compliance information if applicable; and
- (11) Copies of contractor daily work logs and cost estimate or the "Authorization for Initial Response Action" form, as applicable.

(b) A re-submittal of information related to a first-party cost request previously reviewed by the department and board shall include a cover letter explaining the basis of the re-submittal and a copy of the reimbursement approval notice issued under Odb 401.37(g) indicating which invoices are being re-submitted.

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(c) Submittal of facility compliance information shall include a cover letter explaining the information and the reason for the submittal.

(d) Requests for reimbursement for third-party damage costs shall include:

- (1) A completed request for reimbursement form which includes the information required under Odb 401.34;
- (2) The name, address, and telephone number of the third-party(s) to whom the owner has been found to be liable and all parties to the proceedings;
- (3) A description of the bodily injury or property damage for which the owner has been found to be liable;
- (4) A summary of the legal proceedings resulting in the court order including a chronology of pleadings, hearings and settlement conferences, a list of witnesses, exhibits and affidavits, and a brief description of the testimony and evidence, if applicable;
- (5) A copy of the final court order or court approved settlement;
- (6) Other insurance information required under Odb 401.07, if applicable; and
- (7) Facility compliance information, if applicable.

Source. #6543, eff 7-22-97

Odb 401.37 Reimbursement Approval Procedures.

(a) Upon receipt of a request for reimbursement, the board shall request that the department determine if the request is complete pursuant to Odb 401.35. Any request which is not complete shall be returned to the owner, property transferee or applicant within 30 days of receipt by the board.

(b) If applicable, the board shall request that the department determine the compliance status of the facility pursuant to Odb 401.05 upon receipt of a complete reimbursement request.

(c) Upon receipt of a complete reimbursement request, the board shall request that the department report its recommendation for reimbursement within 90 days of receipt of a request.

(d) In consideration of the departments recommendation, the board shall determine the amount of reimbursement based on the eligible cost criteria of Odb 401.28, Odb 401.29, Odb 401.32 and Odb 401.33, as applicable, and shall authorize the state treasurer to disburse said amount from the fund.

(e) All reimbursements made from the fund for corrective action costs invoiced by the department which have not been paid by the owner or property transferee, shall be paid directly to the department.

(f) All reimbursements made from the fund for corrective action costs which have not been paid by the owner or property transferee, shall be co-payable to the owner or transferee and the contractor.

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(g) On behalf of the board, the department may issue a notice of reimbursement to the owner, property transferee or applicant.

Source. #6543, eff 7-22-97

Odb 401.38 Priority. The board shall consider requests for reimbursement from the fund in the chronological order received.

Source. #6543, eff 7-22-97

Odb 401.39 Requests for Reconsideration.

(a) Any owner, property transferee, applicant, or distributor as defined in RSA 146-D:2, I, who is aggrieved by a decision of the department or the board may request an opportunity for an appearance before the board to present additional information.

(b) A request for appearance shall include a statement of the relief sought and the rule or statutory provision under which the relief is sought.

(c) The board shall establish a date, time and place for the aggrieved party to appear, at its next regularly scheduled meeting following the receipt of a request, and shall provide written notice to the party.

Source. #6543, eff 7-22-97

Odb 401.40 Requests for Waivers.

(a) An owner, property transferee or applicant may request the board to waive the application of the rules pertaining to fund eligibility and reimbursement, unless such request, if granted, would constitute a waiver of statutory requirements.

(b) Requests for waivers shall be submitted in writing to the board and shall include the following information:

(1) A specific reference to the section of the rule for which a waiver is being sought;

(2) A full explanation of why a waiver is necessary;

(3) A full explanation of the alternatives for which a waiver is being sought, if applicable, with supportive information; and

(4) A full explanation of how the granting of a waiver would be consistent with the intent of RSA 146-D, RSA 146-E or RSA 146-F and these rules.

(c) The board shall approve a request for a waiver, upon finding that the criteria of Odb 401.40(b) has been met.

(d) The board shall provide written notice of its decision.

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Source. #6543, eff 7-22-97

CHAPTER Odb 500 - REPEALED

Source. #4918, eff 8-22-90; ss by #5114, eff 4-16-91; ss by #5535, eff 12-21-92; rpld by #6543, eff 7-22-97